



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 22, 1994

Ms. Dawna R. Carr
Butler & Binion
Attorneys at Law
112 East Pecan
San Antonio, Texas 78205

OR94-474

Dear Ms. Carr:

The VIA Transit Authority (the "authority") received a request for an internal document written by Karen Twiefel and dated June 7, 1991. The authority has asked if this information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The request was assigned ID# 26789.

The authority contends that the information is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex.App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. A governmental body must meet both prongs of the section 552.103(a) test for information to be excepted from public disclosure.

The authority has provided information showing that it is a party to pending litigation over contaminated soil discovered at the Alamodome site. The authority purchased the site for the purpose of constructing a bus facility and a multi-use dome facility. The requested document was submitted to this office for review. The subject of the document is a meeting about the contaminants and contaminated soil at the authority's Alamodome site. Since the authority has met its burden of showing that it is a party to pending litigation and that the requested information relates to that litigation, the document at issue may be withheld from disclosure.¹

¹Because this document may be withheld from disclosure under section 552.103(a), we do not need at this time to consider your argument that the document is excepted from disclosure under section 552.111.

The authority states that it has asserted a privilege to keep from disclosing the document during discovery in the pending litigation. We note, however, that if the document is obtained by all parties to the litigation, whether through discovery or otherwise, no section 552.103(a) interest will exist with respect to that information. Open Records Decision No. 349 (1982) at 2. If the opposing parties in the anticipated litigation see or have access to the document at issue there would be no justification for withholding it from the requestor pursuant to section 552.103(a). The applicability of section 552.103(a) also ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982) at 3. We also note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, it is within the authority's discretion to release this information to the requestor. Gov't Code § 552.007; Open Records Decision No. 542 (1990) at 4.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 26789

Enclosures: Submitted documents

cc: Mr. Loydean Thomas
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(w/o enclosures)